

**GUTTILLA MURPHY ANDERSON, P.C.**  
Dawn M. Maguire (Ariz. No. 20368)  
5415 E. High St., Suite 200  
Phoenix, Arizona 85054  
Email: [dmaguire@gamlaw.com](mailto:dmaguire@gamlaw.com)  
Phone: (480) 304-8300  
Fax: (480) 304-8301

Attorneys for Chapter 7 Trustee Dina L. Anderson

**UNITED STATES BANKRUPTCY COURT**

## **DISTRICT OF ARIZONA**

In Re:

David W. Remieres and Jennifer F. Remieres,  
Debtors.

CHAPTER 7

Case No. 2:19-bk-12898-BKM

## U.S Bank National Association,

Movant,

VS.

David W. Remieres and Jennifer F. Remieres,  
Debtors, and Dina L. Anderson, Chapter 7  
Trustee,

## Respondents.

## **TRUSTEE'S OBJECTION TO MOTION TO LIFT THE AUTOMATIC BANKRUPTCY STAY**

Re; Real Property Located at:  
9021 W. Elm Street Unit 3  
Phoenix, AZ 85037

Dina L. Anderson, the Chapter 7 Trustee appointed in this case (“Trustee”), by and through undersigned counsel, hereby objects to U.S. Bank National Association’s (“U.S. Bank”) *Motion for Relief from the Automatic Stay* (“Motion”). The Motion was filed on December 10, 2019, seeking to lift the automatic stay imposed under 11 U.S.C. § 362(a) for the non-exempt real property located at 9021 W. Elm Street Unit 3, Phoenix, Arizona 85037 (“Property”). This objection is supported by the following Memorandum of Points and Authorities.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

## I. FACTUAL BACKGROUND

1. On October 9, 2019 (“Petition Date”), David W. Remieres and Jennifer F. Remieres (“Debtors”) filed a Voluntary Petition under Chapter 7 of the United States Bankruptcy Code.

1           2. Dina L. Anderson is the duly appointed and acting Chapter 7 Trustee in this  
2 proceeding.

3           3. According to the Debtors' Schedule A/B, Debtors hold a full ownership interest  
4 in the Property.

5           4. According to its Motion, Remieres holds a consensual lien against the Property,  
6 with a principal balance owing in the amount of \$104,265.82, plus accrued and accruing interest  
7 and accruing assessments, late charges, attorneys' fees and costs. See Motion at p. 3. Using  
8 these figures, Remieres is clearly protected by the equity cushion in this non-exempt property.

9           5. According to Zillow the Property is worth \$114,082.00. Accordingly, given the  
10 value of the Property granting Remiere's requested relief is premature.

11          6. The Trustee has been working through BK Global with U.S. Bank National  
12 Association for a sale of this Property.

13 **II.     LEGAL DISCUSSION**

14 **Movant is Adequately Protected.**

15          “To obtain stay relief from the automatic stay, the party seeking relief must first  
16 establish a prima facie case that ‘cause’ exists for relief § 362(d)(1).” In re Smith, 389 B.R.  
17 902, 918 (Bankr. D. Nev. 2008). “Cause” includes the lack of adequate protection. 11 U.S.C. §  
18 362(d)(1).

19          A common form of adequate protection is the existence of an “equity cushion.” See In  
20 re Mellor, 734 F.2d 1396, 1400-01 (9th Cir. 1984) (defining “equity cushion” as the “classic  
21 form of adequate protection for secured debt”). An equity cushion exists “where the value of  
22 the property is sufficient to fully secure the moving creditor.” In re Jordan, 392 B.R. 428, 447  
23 (Bankr. D. Idaho 2008). The equity cushion must be large enough to adequately protect the  
24 moving creditor’s secured claim. See In re Mellor, 734 F.2d at 1401 (concluding that the equity  
25 cushion of 20% of the total value of the property was sufficient adequate protection) citing In re  
26 McGowan, 6 B.R. 241, 243 (Bankr. E.D. Pa. 1980) (holding a 10% cushion sufficient to be  
27 adequate protection); In re Rogers Development Corp., 2 B.R. 679, 685 (Bankr. E.D. Va. 1980)  
28 (determining that an equity cushion of approximately 15% to 20% was sufficient adequate

protection to the creditor, even though the debtors had no equity in the property).

Where the Property has an “equity cushion” of almost \$40,000.00, that amount is clearly sufficient to adequately protect the Movant’s claim, stay relief is not appropriate. As in In re McGowan and In re Rogers Development Corp., an equity cushion adequately protects a secured creditor’s claim. Remieres does not allege that the Property is declining in value. As the secured claim is protected by the Property’s value, the Movant has not proven its burden to have the automatic stay lifted at this time. The Trustee is currently acquiring the necessary documents and information to sell the non-exempt real property under 11 U.S.C. § 363.

**WHEREFORE** the Trustee respectfully requests that the Court deny the Motion.

DATED: December 23, 2019

GUTTILLA MURPHY ANDERSON, P.C.

/s/ Dawn M. Maguire #20368  
Dawn M. Maguire  
Attorneys for Chapter 7 Trustee

1       **E-FILED** on December 23, 2019 with the  
2       U.S. Bankruptcy Court and copies served  
3       via ECF notice on all parties that have  
4       appeared in the case.

5       **COPY** e-mailed the same date to:

6              Dina L. Anderson  
7              *Chapter 7 Trustee*

8              Alex Schulz  
9              Christina Harper  
10             The Mortgage Law Firm, PC  
11             2999 N. 44<sup>th</sup> Street, Suite 625  
12             Phoenix, AZ 85015  
13             Alex.Schulz@mtglawfirm.com  
14             Christina.Harper@mtglawfirm.com  
15             *Attorneys for Movant*

16       **COPY** mailed the same date via U.S. Mail to:

17              Office of the United States Trustee  
18              230 N. First Ave., Suite 204  
19              Phoenix, AZ 85003-1706

20              David W. Remieres  
21              Jennifer F. Remieres  
22              529 York Avenue  
23              Pawtucket, RI 02861  
24              *Debtors*

25              William E. Markov  
26              Hartley Markov Law  
27              11225 North 28<sup>th</sup> Drive, Suite B-103  
28              Phoenix, AZ 85029  
29              *Attorney for Debtors*

30              Alex Schulz  
31              Christina Harper  
32              The Mortgage Law Firm, PC  
33              2999 N. 44<sup>th</sup> Street, Suite 625  
34              Phoenix, AZ 85015  
35              *Attorneys for Movant*

36              /s/ Joanellen Campanaro